

**THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION**

KENNETH CHANEY,)
Plaintiff,)
v.)
JO ANNE B. BARNHART,) No. 04-6096-CV-SJ-FJG-SSA
COMMISSIONER OF SOCIAL SECURITY,)
Defendant.)

ORDER

Pending before the Court is Defendant's Motion to Dismiss Plaintiff's Complaint (Doc. No. 5). Defendant states that this Court lacks subject matter jurisdiction pursuant to Rule 12(b) of the Federal Rules of Civil Procedure in that plaintiff has failed to exhaust his administrative remedies and has not received a "final decision" of the Commissioner prior to seeking judicial review by this Court. Plaintiff has filed no opposition to the pending motion to dismiss.

This is a proceeding under Titles II and XVI of the Social Security Act. On June 24, 2004, an administrative law judge (ALJ) rendered a partially favorable decision and advised plaintiff of the right to request Appeals Council review within 60 days of the ALJ's decision. See Doc. No. 6, Exhibit 1. Plaintiff had not filed a request for Appeals Council review as of the date of the filing of the pending motion. See Doc. No. 6, Exhibit 2. Instead, on August 17, 2004, plaintiff filed the pending civil action in this Court.

The Court agrees with the points and authorities in defendant's brief in support of its motion to dismiss (Doc. No. 6). It is clear that (1) in order to obtain review in this Court

under 42 U.S.C. § 405(g), a claimant must first exhaust administrative remedies; (2) the four-step administrative review process requires claimants to pursue Appeals Council review before proceeding to an appeal in U.S. District Court (see 20 C.F.R. §§ 404.900(a), 404.967, 404.981, 422.210); and (3) the claimant in the pending case has not yet exhausted his administrative remedies by pursuing Appeals Council review. Consequently, defendant's motion to dismiss for lack of subject matter jurisdiction (Doc. No. 5) is

GRANTED.

IT IS SO ORDERED.

/S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
United States District Judge

Dated: May 17, 2005
Kansas City, Missouri